Filed 1/23/19 In re K.R. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re K.R., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. M.B., Defendant and Appellant.	G056355 (Super. Ct. No. 16DP0590) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sherri Honer, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

M.B. (Mother) appeals from the juvenile court's judgment terminating her parental rights to her nine-year-old daughter K.R., pursuant to Welfare and Institutions Code section 366.26.[1] She raises the following contentions: (1) the court lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); (2) the court violated Mother's constitutional rights by failing to transfer the case to Nevada; (3) Mother did not receive reasonable reunification services; and (4) the court should have granted her section 388 modification petition. We conclude all of these contentions lack merit, and we affirm the judgment.

FACTS

This is the second appeal we have considered in the dependency case. In *In re K.R.* (Sept. 6, 2017, G054455 [nonpub. opn.]), we affirmed the juvenile court's decision to assume emergency jurisdiction, its jurisdictional finding under section 300, and its dispositional order removing K.R. from her parents' custody. We will not repeat the facts summarized in our prior opinion, unless it is relevant to our discussion in this case, and incorporate them by reference.

Suffice it to say, K.R. had lived with her paternal grandparents in Arizona since her birth, however they did not have legal custody of her. Mother and Father, who were not married, resided in Nevada and had unresolved problems with domestic violence, substance abuse, and criminal activity. Mother lost her parental rights to two other children in Nevada.

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

When K.R. was seven years old, she was taken into protective custody while on a road trip to Disneyland with her friend and Mother. Mother and the children were staying in a Garden Grove hotel when Mother was arrested for burglary, identity theft, and possession of illegal narcotics. K.R. could not be immediately returned to the care of her paternal grandparents because it was discovered they had criminal histories involving controlled substances and paternal grandfather had a prior conviction involving sex with a minor. K.R.'s maternal grandmother lived in Nevada and had not yet been assessed for placement.

On June 6, 2016, Orange County Social Services Agency (SSA) filed a juvenile dependency petition alleging K.R.'s parents failed to protect her under section 300, subdivision (b). The court asserted temporary emergency jurisdiction under the UCCJEA and Family Code section 3424, subdivision (a). K.R. was placed in a foster home located in California. During these dependency proceedings, K.R.'s caregivers helped her overcome problems with obesity, bedwetting, and poor hygiene.

The jurisdictional hearing was continued several times, from early June to November 2016. During this time, SSA learned the Interstate Compact on the Placement of Children (ICPC) had been denied in Arizona (paternal grandparents) and Nevada (maternal grandmother). In addition, Father would be incarcerated until the end of January 2017. Mother filed a motion to dismiss the case, asserting the juvenile court lacked jurisdiction because Mother, Father, and K.R. were all Nevada residents.

At an evidentiary hearing taking place on multiple dates (starting at the end of November 2016 and concluding January 3, 2017). Mother argued there was no reason for emergency jurisdiction in California and K.R. should be sent to Nevada to live with her maternal grandmother. Father agreed emergency jurisdiction was not warranted and K.R. would not be in any danger if she returned to Arizona to live with her paternal grandparents. SSA and K.R.'s counsel argued the court had jurisdiction under the UCCJEA.

The court agreed it had emergency jurisdiction and denied Mother's motion to dismiss. The court next made jurisdictional findings and sustained the petition. At the hearing, the court noted it had multiple conversations with the Arizona and Nevada judges and those courts had not assumed jurisdiction of the case. The court stated County Counsel also contacted its counterpart in Arizona and made no progress in getting the case moved to Arizona. The court proceeded with the case and held the dispositional hearing. After considering the evidence and oral argument, the court removed K.R. from her parents' custody. Mother and Father were given reunification plans, which included six hours of monitored visitation per week.

Mother and Father appealed from these ruling by attacking the court's decision to exercise emergency jurisdiction and consider the dependency petition pursuant to the UCCJEA. Father's appeal also challenged the sufficiency of the evidence supporting the court's jurisdictional finding as to him. He maintained there was no evidence his use of drugs and addiction caused K.R. to be at substantial risk of serious physical harm or illness. On September 6, 2017, we affirmed the juvenile court's orders. (*In re K.R., supra*, G054455.)

During the eight months the appeal was pending, Mother resided in Nevada and Father lived in Arizona. Mother met with K.R. and the social worker after Mother was released from jail at the end of January 2017. Thereafter, she had no further contact with either of them for the next five months. Despite being offered numerous case plan referrals appropriate for Mother's plan to reside in Nevada, Mother did not enroll in any programs and missed all the drug tests. At the six-month review hearing held in June 2017, the court determined Mother was provided reasonable services and continued the case for a 12-month review hearing.

In July 2017, the social worker recommended the court terminate parental rights. Mother had only called K.R. one time and had not seen K.R. since she was

released from jail in early February 2017. Additionally, Mother had an active arrest warrant in Orange County.

The following month, in an addendum report, the social worker determined Mother was incarcerated again, but this time in Nevada. The social worker contacted the facility to offer Mother services and determine if Mother could attend future hearings. Mother wrote to the social worker and indicated she completed two chapters of a parenting handbook. She was waiting for more classes to begin, and she agreed to attend 12-step meetings. The social worker's next report confirmed Mother attended meetings and was working on the parenting handbook.

The 12-month review hearing took place on December 7, 2017 (and at this point the dependency case had been ongoing for 18 months). Mother's counsel stated Mother was hopeful she would be released from jail soon. Counsel added he had spoken with Mother and she understood her options. Mother gave counsel her permission to agree to continue funding for services upon the setting of a permanency hearing (§ 366.26). At the hearing, counsel submitted on issues of "termination of services and the setting of the [permanency hearing] with the understanding that further services will be funded. Father also agreed to setting the permanency hearing if services would continue to be funded.

The court ruled the parents received reasonable services and terminated them. However, the court also ordered continued funding for random drug testing of both parents until the permanency hearing set for April 2018. The court stated funding would cease if either parent had a "missed, positive, dilute or tampered drug test." It ordered SSA to continue sending parenting packets to Mother while she was in custody and authorized funding for outpatient substance abuse treatment, individual counseling, and parent education classes for Mother and Father. The court warned funding would cease immediately if the parents had one unexcused missed session or class or if they were terminated for lack of compliance. Finally, the court ordered the clerk to send Mother the

advisement about her statutory writ rights. This advisement and the minute order were sent to Mother's "address on file," which was listed as "unknown address."

DISCUSSION

I. *Subject Matter Jurisdiction*

"The UCCJEA is the exclusive method in California for determining subject matter jurisdiction in child custody proceedings involving other jurisdictions. [Citations.] The term 'child custody proceeding' is defined as 'a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue.' [Citation.] 'A dependency action is a "'[c]hild custody proceeding'" subject to the UCCJEA.' [Citation.] [¶] The purposes of the UCCJEA in the context of dependency proceedings include avoiding jurisdictional competition and conflict, promoting interstate cooperation, litigating custody or visitation where the child and family have the closest connections, avoiding relitigation of another state's custody or visitation decisions, and promoting exchange of information and other mutual assistance between courts of sister states. [Citation.]" (*In re M.M.* (2015) 240 Cal.App.4th 703, 715; Fam. Code, § 3421, subd. (b).)

"Subject matter jurisdiction over a dependency action or other child custody proceeding either exists or does not exist at the time the petition is filed, and jurisdiction under the UCCJEA may not be conferred by mere presence of the parties or by stipulation, consent, waiver, or estoppel. [Citations.]" (*In re A.C.* (2017) 13 Cal.App.5th 661, 668 (*A.C.*).)

Under the UCCJEA, a California court has "temporary emergency jurisdiction" to issue custody orders. (Fam. Code, § 3424.) The only prerequisites is that there is an emergency necessitating protection and the child's presence in the state.

Family Code section 3421 lists four alternative basis for subject matter jurisdiction in *nonemergency* child custody proceedings. The list represents the prerequisites of jurisdiction for a California court to make an initial child custody

determination. Jurisdiction under Family Code section 3421, subdivision (a), is established by the following evidence: (1) the child or a parent has lived in California for at least six months making California the child's "home state" (Fam. Code, §§ 3421, subd. (a)(1), 3402, subd. (g)); (2) the child's home state declined to exercise jurisdiction on the ground California is a more appropriate forum because the child or parent has a "significant connection" with California and evidence relating to the "child's care, protection, training, and personal relationships is in California (Fam. Code, § 3421, subd. (a)(2)); (3) the home state court having jurisdiction "declined to exercise jurisdiction (Fam. Code, § 3421, subd. (a)(3)); or (4) the child does not have a home state (Fam. Code, § 3421, subd. (a)(4)). "A child's home state has priority over other jurisdictional bases. [Citations.]" (*A.C., supra,* 13 Cal.App.5th at p. 669.)

"'Although emergency jurisdiction is generally intended to be short term and limited, the juvenile court may continue to exercise its authority as long as the reasons underlying the dependency exist.' [Citation.]" (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1097.) "However, temporary emergency jurisdiction does not confer authority to make a permanent child custody determination. [Citation.] Where . . . there was no existing child custody proceeding in the home state and no prior child custody determination entitled to enforcement, a child custody determination made by a court with temporary emergency jurisdiction remains in effect until an order is obtained from the home state. ([Fam. Code,] § 3424, subd. (b).) If no child custody proceeding is initiated in the home state, the determination becomes final 'if it so provides *and this state becomes the home state of the child*.' [Citation.]" (*In re Gino C.* (2014) 224 Cal.App.4th 959, 965-966.)

Accordingly, if at the time the juvenile court exercises temporary emergency jurisdiction, the court is aware another state may be the child's home state, the California court must contact a court of that state to provide it the opportunity to exercise jurisdiction over the child. (Fam. Code, §§ 3421, subd. (a)(2) & (3), 3424, subd. (b).)

Only after the court from the child's home state expressly or implicitly declines to exercise jurisdiction over the child may the California court assume jurisdiction and consider the merits of the case. (Fam. Code, § 3424, subd. (b).)

"'We are not bound by the juvenile court's findings regarding subject matter jurisdiction, but rather "independently reweigh the jurisdictional facts." [Citation.]' [Citation.]" (*In re S.W.* (2007) 148 Cal.App.4th 1501, 1508.)

II. *Jurisdiction*

In this case, the juvenile court asserted temporary emergency jurisdiction under Family Code section 3424 at the June 7, 2016, detention/jurisdictional hearing. The case was continued for nearly six months. The juvenile court asserted emergency jurisdiction on December 14, 2016, following an evidentiary hearing. The court discussed evidence indicating Arizona was not willing to accept jurisdiction.

Several weeks later, on January 3, 2017, the court held the dispositional hearing. The court noted that despite significant contacts with an Arizona judge and an Arizona court clerk to transfer the case, the Arizona court had not assumed jurisdiction. The juvenile court stated, "Since there has not been any movement from Arizona, at this point the court is going to proceed with disposition." The court declared K.R. a dependent child of the juvenile court, ordered reunification services, and scheduled a six-month review hearing. This ruling would only be permissible if the court had nonemergency jurisdiction pursuant to one of the four prerequisites described in Family Code section 3421.

These numerous rulings were all affirmed in our prior opinion, *In re K.R., supra,* G054455. We specifically rejected Mother and Father's challenges to the court's assertion of emergency jurisdiction. (*Ibid.*) Mother asserts we did not decide the issue of the court's nonemergency jurisdiction under UCCJEA. True, we did not discuss in the prior opinion issues the parents did not raise in their previous appeals. However, our consideration of this jurisdictional issue can reasonably be inferred by our affirmance of

the juvenile court's dispositional ruling. As stated above, the juvenile court cannot adjudicate a dependency petition and enter disposition orders without first determining it had jurisdiction over the case. (See Fam. Code, §§ 3421, 3423.)

Our affirmance of the dispositional ruling impliedly resolved the jurisdictional challenge now being raised. "[T]he doctrine of '"law of the case"' requires a trial court and reviewing courts to follow the principles laid down upon a former appeal in the same case . . . [and t]he doctrine applies with equal force to legal determinations whether they are express or implied. [Citations.] Thus where a particular point is essential to the decision, and the appellate court could not have rendered its decision without its determination, a necessary conclusion is that the point was impliedly decided, even though the point was not expressly mentioned in the decision. [Citation.]" (*City of Oakland v. Superior Court* (1983) 150 Cal.App.3d 267, 277-278.) The courts nonemergency jurisdiction was necessarily determined when we affirmed the dispositional ruling in *In re K.R., supra,* G054455. That determination, although not express, became law of the case. We need not reconsider the legal issue in this appeal.

III. *Due Process*

Mother asserts, "The question here is whether, as a matter of constitutional due process, juvenile court[s] in dependency proceedings must request that the case the court acquired under emergency jurisdiction be transferred to the legal state of [the] parent's residence when ordering . . . reunification of the family and that the out-of-state parent is afforded the similar access to their children as do the parents residing in California." In short, Mother asserts it is her constitutional right to demand the California juvenile court transfer the dependency case to any state she chooses to reside.

SSA asserts this argument fails for many reasons, the most obvious being it was not raised below. We agree, "A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court.

[Citations.] Forfeiture, also referred to as 'waiver,' applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings. [Citations.]" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.)

An equally significant flaw with Mother's argument is that it ignores Father's rights. If Mother is living in Nevada, and Father resides in Arizona (and it is foreseeable either one could be incarcerated in a completely different state) why are her constitutional rights more important than his are? What about the child's best interests when only one parent is complying with the case plan and lives in a different state than the other parent. Moreover, noticeably missing from Mother's argument is any supporting legal authority holding a parent has a constitutional right to reunification services or a right to relocate a child each time a parent changes location to make compliance with the case plan easier. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 563 ["Reunification services are a benefit; a parent is not constitutionally entitled to services"].) We need not discuss this untimely constitutional challenge further.

IV. *Notice of the Section 366.36 Hearing & Reunification Services*

Mother maintains we can consider issues concerning the December 7, 2017 hearing, when the court set the section 366.26 permanency hearing (.26 hearing), because she was not properly advised by mail of the writ requirement for challenging that order. Accordingly, Mother asserts she is excused from complying with the writ requirement (§ 366.26, subd. (*l*)), and may challenge the order in this appeal. (Citing *In re Cathina W.* (1998) 68 Cal.App.4th 716, 721-722 (*Cathina W.*).)

Mother explains she did not attend the December 7, 2017, hearing because she was incarcerated in Nevada. She maintains that although the CASA report stated the name of the facility where Mother was incarcerated, the minute order indicates the court ordered the clerk to send the writ advisement to her address on file, which was

"unknown." There is no evidence in the record suggesting a writ advisement was sent to Mother's jail.

Ordinarily, "After the juvenile court makes an order setting a section 366.26 hearing, the court must advise all parties, including a parent, of section 366.26's requirement of filing a petition for extraordinary writ review. [Citations.] The court must give an oral advisement to parties present at the time the order is made. [Citations.] . . . 'Within one day after the court orders the hearing under . . . section 366.26, the advisement must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under . . . section 366.26.' [Citation.] Copies of Petition for Extraordinary Writ (form JV-825) and Notice of Intent to File Writ Petition and Request for Record (form JV-820) 'must accompany all mailed notices informing the parties of their rights.' [Citation.] Judicial Council form JV-820 contains an advisement about the need to file the notice of intent form to obtain Court of Appeal review of an order setting a section 366.26 hearing and provides important information regarding completion and filing of the form, filing of the writ petition, and specific deadlines." (*In re A.H.* (2013) 218 Cal.App.4th 337, 346-347.)

One of the cases cited by Mother, *Cathina W.*, concluded the mother was entitled to review of the juvenile court's order setting the .26 hearing on appeal from the subsequent order terminating her parental rights because the mother was not given an oral or written writ advisement. (*Cathina W.*, *supra*, 68 Cal.App.4th at pp. 722-725.) In that case, the mother did not attend the hearing where the court set the .26 hearing. (*Id.* at p. 723.) The written writ advisement was returned to the court as undelivered and had the mother's new address. The court clerk did not remail the notice to the mother at the new address. (*Ibid*.) The mother asserted she did not receive the notice and was not aware of her right to seek writ review. The court rejected SSA's argument the mailing defect was irrelevant because it was her attorney's duty to tell mother and file a writ petition. (*Id.* at p. 724.) It also rejected the argument mother had notice of the .26 hearing date, which

was continued for nine months, giving mother sufficient time to seek writ relief. (*Ibid.*) The court explained nothing in the notice of the hearing date referred to the provisions and requirements of section 366.26, subdivision (*l*).

The court in the *Cathina W.* case determined relief was warranted "because the juvenile court, through no fault of the mother, failed to discharge its duty to give her timely, correct notice." (*Cathina W.*, *supra*, 68 Cal.App.4th at p. 722.) It agreed the mother had "shown good cause for her failure to file a notice of intent and request for record and a writ petition." (*Ibid*.)

In this case, Mother's counsel told the court Mother was absent because she was incarcerated in Nevada. The social worker reported she had no contact with Mother from February to August 2017. In an addendum report dated September 12, 2017, the social worker stated she had confirmed Mother was incarcerated in Nevada, and provided the address of the jail facility. The social worker's efforts to provide Mother services in jail was discussed in subsequent reports. The court read and accepted these reports into evidence at the December 7, 2017 hearing. In light of the above, it appears the court constructively possessed mother's jail address, but the clerk failed to comply with California Rules of Court, rule 5.590(b)(2). We conclude there is good cause to excuse mother's failure to file a writ petition and will address her argument regarding lack of reasonable reunification services as part of this appeal.

Mother asserts she was provided unreasonable reunification services due to K.R.'s placement in a different state, which made visitation and reunification virtually impossible. She asserts the court should reverse the order terminating reunification, and offer Mother additional services and transfer the case to Nevada to "achieve a foster placement near mother's home, if no relative placement is approved, by way of ICPC." We conclude there were no grounds to continue services beyond the 18-month review, taking place December 7, 2017.

Section 366.22 provides that when, as here, "a case has been continued [beyond the 12-month review (§ 366.21, subd. (g)(1)),] the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian." Section 366.22, subdivision (a)(3), further provides that at the 18-month review, "[u]nless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court *shall* order that a hearing be held pursuant to [s]ection 366.26 . . . ." (Italics added.)

Subdivision (b) of section 366.22 provides the juvenile court may continue the case for up to six months if the "court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program . . . or a parent recently discharged from incarceration or institutionalization . . . and making significant and consistent progress in establishing a safe home for the child's return . . . ."

Subdivision (b) also provides "For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to [s]ection 366.26 is not in the best interests of the child. [¶] . . . . The court shall not order that a hearing pursuant to [s]ection 366.26 be held unless there is clear and convincing evidence *that reasonable services have been provided or offered* to the parent or legal guardian." (§ 366.22, subd. (b)(3)(B) & (C), italics added.) Mother focuses on this italicized language, arguing the court erred in ordering the .26 hearing because there was no evidence reasonable services were provided.

Mother does not dispute that many of the grounds for continuing services were not present in this case. There is no evidence, and Mother points to none, showing

she made "significant and consistent" progress in a residential drug treatment plan or could offer K.R. a safe home when she was released from jail. Indeed, Mother's argument acknowledges she was unable to visit K.R. when she lived in Nevada and during periods of incarceration. She failed to comply with any component of her case plan, until she was incarcerated in August 2017, a few months before the 18-month review hearing.

A parent cannot refuse to participate in reunification treatment programs until the final hearing has been set and then seek an extension of the reunification period to complain about the inadequacy of those programs. "If Mother felt during the reunification period that the services offered her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan[.]" (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.)

We recognize services include facilitating visitation, including visits for incarcerated parents. (*In re T.G.* (2010) 188 Cal.App.4th 687, 696-697.) The record shows Mother did not complain about visitation issues with the social worker or the court during the reunification period. Indeed, she had no contact with the social worker from February to August 2017. During that time, she made only one telephone call to K.R. in July 2017. Soon thereafter, she was incarcerated but did not inform the social worker about her location or immediately request face-to-face visitation. Paternal grandmother told the social worker Mother was in jail, and then the social worker contacted the facility to ask what services could be provided.

And finally, at the December 7 hearing, Mother's counsel asserted he had spoken with Mother and she understood her options. He did not complain about the adequacy of past services. Instead, counsel indicated he felt "comfortable" submitting on the issue of terminating services and setting the .26 hearing on the condition the court continue funding for services. This bargain gave Mother more of the *same* services for

several additional months. Thus, Mother's counsel gave no indication the services being provided were unreasonable.

V. *388 Petition*

Mother asserts the court improperly denied her section 388 petition without a full evidentiary hearing. We disagree.

A juvenile court dependency order may be changed, modified, or set aside at any time. (§ 385.) "Section 388 permits a parent to petition the court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in the dependency. The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests. [Citation.] A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.] '"[C]hildhood does not wait for the parent to become adequate."' [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*).)

When a parent brings a section 388 petition after a permanency placement hearing has been set, the best interests of the child are of paramount importance. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 [parents' interest "in the care, custody and companionship of the child" no longer the focus].) We review the court's order denying a section 388 petition without a hearing for abuse of discretion. (*Id.* at p. 318.)

Mother filed the section 388 petition two days after she was released from jail. The evidence showed that before this dependency case Mother outsourced her parental duties to paternal grandparents. She was incarcerated for the majority of the dependency proceedings, and only at the end did she begin to address the serious reasons why K.R. was removed from her care. Drug addiction, domestic violence, neglect, and

criminal activity are significant problems. Such evidence does not establish an order returning custody or a 60-day temporary release would be in K.R.'s best interest.

We recognize a juvenile court must liberally construe allegations in a section 388 petition. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; Cal. Rules of Court, rule 5.570(a).) But Mother was required to demonstrate a prima facie case of *changed* circumstances, not *changing* circumstances, on both elements. (*Casey D.*, *supra,* 70 Cal.App.4th at p. 47.) Mother did not satisfy that burden, and thus he was not entitled to an evidentiary hearing. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 260.) We conclude the court did not abuse its discretion by denying Mother's section 388 petition without an evidentiary hearing.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.